

House Health & Human Resources Committee Amendment No. 1

as amended

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 648 _____

House Bill No. 168 _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 6, is amended by adding Sections 2 through 18 of this act as a new part.

SECTION 2. This act shall be known and may be cited as the "Hypnotherapist Registration Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Board" means the board of medical examiners;

(2) "Council" means the board of medical examiners' hypnotherapist council;

(3) "Division" means the division of health related boards as defined by § 68-1-101;

(4) "General Hypnotherapy" means a professional relationship between a registered hypnotherapist and a client in which the registered hypnotherapist provides assistance to the client in matters related to the recreational, vocational, avocational, educational, stress management or self-improvement goals of the client provided such self-improvement goals are not the focus of a medical or mental health disorder;

(5) "Hypnotherapy" means the induction of a hypnotic state in a client to increase motivation or alter behavioral patterns. Hypnotherapy includes consultation with a client to determine the nature of the client's problem, assessment of a client to determine such client's suitability for hypnotherapy, preparation of a client to enter a hypnotic state,

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explanation to a client of the nature of the hypnotic state, instruction of a client in self-hypnosis conditioning, testing a client to determine the degree of physical and emotional suggestibility, induction of the hypnotic state in a client using individualized methods and techniques based on interpretation of test results and analysis of problems, and discussion with a client regarding the results of hypnosis;

(6) "Independent practice" means the provision to the public of general hypnotherapy or referred hypnotherapy for remuneration by a person who meets all requirements for the practice of hypnotherapy and who has received registration for the practice of hypnotherapy;

(7) "National professional organization" means an organization that is dedicated to providing training, continuing education and performance testing in hypnotherapy that is incorporated in any state of the United States of America, can document active membership in at least fifteen (15) states and has training requirements that are at least sufficient for registration as a registered hypnotherapist in Tennessee;

(8) "Person" means an individual, association, partnership, or corporation;

(9) "Psychotherapy" means a relationship for remuneration between a therapist and a client in which the therapist renders assistance to the client for the purpose of diagnosing, treating, curing, or improving mental health disorders;

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(10) "Qualified supervisor" means any person who is a registered hypnotherapist who meets the qualifications for independent practice of hypnotherapy and has been in practice as a hypnotherapist for at least three (3) years;

(11) "Referred hypnotherapy" means a professional relationship between a registered hypnotherapist and a client in which the registered hypnotherapist either provides assistance to the client in:

(A) matters related to a medical condition diagnosed by a licensed medical doctor, licensed doctor of dental medicine or a licensed doctor of chiropractic medicine who has specifically referred the client to the registered hypnotherapist in writing or by prescription; or,

(B) Provides assistance to the client in matters related to a mental health condition diagnosed by a licensed mental health professional who has specifically referred the client to the registered hypnotherapist by written referral;

(12) "Registered hypnotherapist" means any person who has registered in accordance with this act for the practice of hypnotherapy;

(13) "Registration" means that which is required to practice hypnotherapy as defined in this act;

(14) "Supervised practice" means the provision of hypnotherapy to a client under the guidance, critique and review of a qualified supervisor; and

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(15) "Supervision" means review of aspects of the therapeutic relationship between a hypnotherapist and client or clients in a face-to-face meeting for the purpose of improving the therapeutic skills of the person under supervision.

SECTION 4. (a) There is created within the board the hypnotherapist council. The council shall consist of five (5) members appointed by the governor for four (4) year staggered terms, each of whom shall be a resident of this state. Four (4) members shall be registered hypnotherapists, provided for three (3) years after the effective date of this act such persons shall be qualified as members if the person has not completed the training specified in Section 11(3) but the person can document to the governor the maintenance of a practice of hypnotherapy for remuneration for a period of three (3) years prior to such person's appointment. One (1) member shall be a citizen member having specialized knowledge in the area of hypnotherapy.

(b) Any vacant term shall be filled by the governor for the balance of the unexpired term. Members shall be eligible for reappointment and each member shall serve on the council until a successor is appointed.

(c) The division shall provide such administrative, investigatory and clerical services for the council and the board as shall be necessary to fully implement and enforce the provisions of this part.

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(d) The council shall organize annually and shall select a chair and a secretary. A quorum of the council shall consist of three (3) members. Meetings of the council shall be held as frequently as its duties may require. Meetings of the council may be called by the chair of the board or by the chair of the council; provided, that written notification of such called meeting is sent to each council member at least fourteen (14) calendar days in advance of the meeting.

SECTION 5. In addition to the powers elsewhere in this chapter, the board has the duty to:

(1)

(A) Promulgate, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, all rules that are reasonably necessary for the performance of the various duties imposed upon the board or the council by the provisions of this part. Except as otherwise specifically provided by this subdivision, all rules relating exclusively to registered hypnotherapists shall be initiated and adopted by a majority of the members of the hypnotherapists council and then shall be approved by a majority of the members of the board or, alternatively, shall be initiated and adopted by a majority of the members of the board, and shall then be approved by a majority of the members of the council. Subject to the limitations contained in this section, all rulemaking authority delegated by this part shall be vested in the board. The council shall conduct at least one (1) public hearing each year, and shall undertake such other

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activities as shall be reasonably necessary, to solicit comments from registered hypnotherapists and the public concerning policies of the board and council relating to hypnotherapy, as well as any problems existing within the practice of hypnotherapy which may affect the public.

(B) Within the maximum limitations established elsewhere in this part, fees relating to the practice of hypnotherapy shall be set by the board in an amount sufficient to pay all of the expenses of the council as well as all of the expenses of the board that are directly attributable to the performance of its duties pursuant to the provisions of this part;

(2) Issue, under the board's name, all registrations approved by the council and the board and to maintain a registry of the names and addresses of registered hypnotherapists, and all persons whose registrations have been suspended, revoked, or denied renewal for cause within the previous calendar year. These rosters shall be available upon written request and payment of the fee as set by the board. It is the duty of the council to review and approve the qualifications of applicants for registration or renewal as hypnotherapists; and

(3) Collect or receive all fees, fines and moneys owed pursuant to the provisions of this part and to pay the same into the general fund of the state.

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(a) Persons holding a valid registration as a registered hypnotherapist may practice general hypnotherapy or referred hypnotherapy in independent practice, or as part of an association, partnership or corporation.

(b) Persons who are in training to meet the requirements for registration as registered hypnotherapists may practice without registration provided such practice is supervised practice with a person who is a qualified supervisor, and provided such persons in training hold themselves out to the public using the term "intern", or some other designation of trainee status.

SECTION 7.

(a) This act does not prohibit persons legally regulated in Tennessee by any other act from engaging in the practice for which they are authorized so long as they do not represent themselves by the title of registered hypnotherapist. Nothing in this act shall be construed to limit the activities and services provided by a person engaging in the practice of hypnotherapy provided the regulatory act governing such persons contains a scope of practice which might reasonably be interpreted to include the use of hypnotherapy.

(b) This act does not prohibit the practice of nonregulated professions whose practitioners are engaged in the delivery of human services as long as these practitioners neither represent themselves as nor use the title of registered hypnotherapists, nor provide hypnotherapy as defined in Section 3(5).

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(c) Nothing in this act shall be construed to limit the activities and services of a person or intern in hypnotherapy seeking to fulfill the educational or supervision requirements in order to qualify for registration under this act provided that the activities and services of a person or intern are supervised as specified in this act.

(d) Corporations, partnerships, and associations may employ persons seeking to fulfill the educational or supervision requirements for registration if the activities and services rendered by that person constitute a part of the trainee's supervised course of study or required professional supervision.

(e) Nothing in this act shall prohibit a corporation, partnership, or association from contracting with a licensed or registered health care professional to provide services that are similar to those provided by registered hypnotherapists.

(f) Nothing in this act shall prevent the employment, by a registered hypnotherapist, individual, association, partnership or corporation furnishing hypnotherapy for remuneration, of persons not registered under the act to perform services in various capacities as needed, provided that such persons are not in any manner held out to the public as rendering hypnotherapy as defined in Section 3(5).

(g) Nothing contained in this act shall require any hospital, clinic, home health agency, hospice, or other entity that provides health care services to employ or to contract with a registered hypnotherapist to perform any of the activities defined in Section 3(5).

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(h) Nothing in this act shall be construed to limit the services of a person, not registered under the provisions of this act, in the employ of a state, county, or municipal agency or other political subdivision or not-for-profit corporation providing human services if:

- (1) the services are a part of the duties of the person's salaried position;
- (2) the services are performed solely on behalf of the person's employer, and
- (3) such persons are not in any manner held out to the public as registered

hypnotherapists.

(i) Nothing in this act shall prohibit individuals not registered under this act who work in self-help groups or programs or not-for-profit organizations from providing services in those groups, programs, or organizations, provided that such persons are not in any manner held out to the public as registered hypnotherapists.

SECTION 8.

(a) Unless exempted under Section 7 of this act, no person shall, without holding a valid registration as a registered hypnotherapist:

- (1) in any manner hold him or herself out to the public as a registered hypnotherapist under this act;
- (2) attach the title "registered hypnotherapist"; or
- (3) offer to render or render to individuals, corporations, or the public, hypnotherapy as defined in Section 3(5).

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(b) Nothing in this act shall be construed as permitting persons registered as registered hypnotherapists to engage in any manner in the practice of medicine.

(c) When, in the course of providing hypnotherapy to any person, a registered hypnotherapist registered under the provisions of this act finds indication of a disease or condition that in such registered hypnotherapist's judgment requires professional service outside of the hypnotherapist's scope of practice, the registered hypnotherapist shall refer that person to a physician or another appropriate health care provider.

(d) All persons registered as registered hypnotherapists shall give to each client who seeks to receive hypnotherapy from that registered hypnotherapist a full and accurate written disclosure statement of the type and nature of education and training possessed by that registered hypnotherapist. The information contained in this disclosure statement shall contain, but not be limited to, academic degrees earned by the registered hypnotherapist and the nature of their accreditation, training programs in hypnotherapy completed by the registered hypnotherapist, including the number of hours of instruction and duration of training, and national certifications in hypnotherapy held by the registered hypnotherapist. The disclosure statement shall also state that neither psychotherapy nor the diagnosis of mental, dental or medical disease is a part of hypnotherapy and that registration as a registered hypnotherapist does not authorize a person to practice psychotherapy or diagnosis.

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(e) No person registered as a registered hypnotherapist shall publicly advertise his or her services in any way that would cause a reasonable person to conclude that the person registered as a registered hypnotherapist is also a doctor of medicine or of psychology, unless such person is licensed to practice medicine or psychology.

SECTION 9.

(a) No renewal of a certificate of registration shall be approved by the council until the certificate holder submits proof satisfactory to the council that, during the year preceding the application for renewal, the applicant has participated in no fewer than fifteen (15) hours of continuing education course work in hypnosis or hypnotherapy which meets the guidelines established for such course work by the rules of the board.

(b) The council shall approve only those continuing education courses which conform with the guidelines established by the rules of the board. Providers of such courses shall also be approved by the council in accordance with guidelines established by the rules of the board.

(c) The rules of the board may establish exceptions from the requirements of this section in emergency or hardship cases. Such cases shall be individually reviewed and approved by the council.

(d) When any such person shall fail to renew that person's registration and pay the renewal fee after renewal becomes due, the registration of such person shall be automatically

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revoked without further notice or hearing unless renewal is made and all fees paid prior to the expiration of sixty (60) days from the date such renewal becomes due.

(e) Any person registered to practice hypnotherapy by the provisions of this part, who has retired or may hereafter retire from such practice in this state, shall not be made to register as required by this part if such person shall file with the council, an affidavit on a form to be furnished by the council, which affidavit shall state the date on which such person retired from such practice and such other facts as shall tend to verify such retirement as the council shall deem necessary. If such person thereafter reengages in such practice in this state, such person shall apply for registration with the council as provided by this part and shall meet other requirements as may be set by the council.

SECTION 10. (a) Complaints alleging violations of the provisions of this part, or of the provisions of any rule duly promulgated pursuant to Section 5, shall be filed with the board, shall be referred by the board to the division for investigation, and shall be resolved by the council in accordance with the provisions of this part and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A file shall be maintained on each such complaint filed with the board and shall reflect all activities taken by the board, division and council in response to such complaint.

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(b) The council, subject to the approval of the board, may impose one (1) or more of the following penalties for violations of the provisions of this part or the provisions of any rule duly promulgated pursuant to Section 5:

- (1) Denial of an application for registration;
- (2) Revocation or suspension of registration;
- (3) Imposition of an administrative fine not to exceed one thousand dollars (\$1,000) for each count or separate offense;
- (4) Placement of a registered hypnotherapist on probation for such length of time and subject to such conditions as the council may specify, including requiring a registered hypnotherapist to submit to treatment, to attend continuing education courses, or to work under the supervision of another hypnotherapist; or
- (5) Issuance of a reprimand.

(c) The council is empowered to refuse to reinstate registration or cause a registration certificate to be issued to a person it has deemed unqualified, until such time as it finds that such person has complied with all the terms and conditions set forth in the final order rendered pursuant to subsection (a) and that the hypnotherapist is capable of safely engaging in the delivery of hypnotherapy. The council shall conduct hearings in accordance with the Uniform Administrative Procedures Act to refuse to issue, renew or to revoke registration or suspend, place on probation, censure, or reprimand persons registered under this act, and to refuse to

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issue, renew or to revoke registration or suspend, place on probation, censure, or reprimand persons registered under this act;

SECTION 11. (a) A person is qualified to be registered as a registered hypnotherapist, and the board shall issue a registration authorizing the practice of hypnotherapy to an applicant who:

- (1) has applied in writing on the prescribed form and has paid the required fee;
- (2) is at least twenty-one (21) years of age and has not engaged in conduct or activities which would constitute grounds for discipline under this act;
- (3) documents that such applicant has received a minimum of one hundred (100) hours of personal instruction in hypnosis or hypnotherapy that is either sanctioned by a national professional organization, or is from any school teaching hypnotherapy that is accredited by an agency authorized by the United States Department of Education or is otherwise licensed, registered, approved or sanctioned by any state of the United States, provided such organization or school teaches a curriculum that includes:
 - (A) instruction in the history of hypnosis;
 - (B) techniques of client assessment;
 - (C) suggestibility testing;
 - (D) induction and dehypnotization techniques;
 - (E) deepening techniques;

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(F) principles of post-hypnotic suggestion;

(G) contraindications for hypnosis;

(H) treatment planning;

(I) self-hypnosis training;

(J) administration and record-keeping,

(K) law and ethics; and

(L) an orientation to the limits of practice specified in this act sufficient to allow a reasonable person to make an informed decision if the client's problem reasonably falls within the scope of hypnotherapy.

(4) has completed a minimum of two hundred (200) hours of supervised practice of hypnotherapy with a person who is a qualified supervisor as defined by this act, with a ratio of not less than one (1) hour of personal supervision for every fifteen (15) hours of supervised practice.

(5) for each year after the initial year of registration, documents fifteen (15) hours of continuing education in hypnosis or hypnotherapy during the previous year.

(b) No person issued a registration under this act authorizing the practice of hypnotherapy shall ever be referred to as a primary care provider or health care provider nor be permitted to use such designation.

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(a) Applications for registration or renewal as a registered hypnotherapist shall be made to the council on forms prescribed by the board and accompanied by the required fee. The required fee is not refundable. All applications shall contain such information to enable the council to determine the qualifications of the application for registration to practice as a registered hypnotherapist.

(b) The expiration date and renewal period for each registration issued under this act shall be set by the board. Registered hypnotherapists may renew their registration during the sixty (60) day period preceding its expiration date by paying the required fee and demonstrating compliance with any continuing education requirements.

(c) Any person who has permitted a registration to expire or who has a registration on inactive status may have it restored by submitting an application to the council and filing proof of fitness to have the registration restored, including, if appropriate, evidence which is satisfactory to the council certifying the practice of hypnotherapy in another jurisdiction, and by paying the required fee.

(d) If a person has not maintained an active practice in another jurisdiction which is satisfactory to the council, the council shall determine the person's fitness to resume active status. The council may also require the person to complete a specified period of evaluated hypnotherapy work experience.

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(e) Any person whose registration expired while on active duty with the armed forces of the United States, while called into service or training with the national guard or in training or education under the supervision of the United States government before induction into the military service may have such person's registration restored without paying any renewal fees if, within two (2) years after the completion of such service, training, or education, except under conditions other than honorable, the council is furnished with satisfactory evidence that the person was so engaged and that such service, training, or education was so completed.

(f) A registration to practice hypnotherapy shall not be denied any applicant because of the applicant's race, religion, creed, national origin, political beliefs or activities, age, sex, sexual orientation, or physical impairment.

SECTION 13.

(a) For three (3) years after the effective date of this act the board shall, on application, issue a registration to any person for the practice of hypnotherapy who has not completed the training specified in Section 11(3), but who can document to the council the maintenance of a practice of hypnotherapy for remuneration for a period of three (3) years. Persons receiving initial registration under this section shall not be required to complete further training in hypnotherapy beyond the annual continuing education in hypnotherapy required by this act.

(b) For three (3) years after the effective date of this act the board shall, on application, issue a registration to any person for the practice of hypnotherapy who has not completed any

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internship, trainee or supervision period specified in Section 11(4) but who otherwise meets the requirements of Section 11(4) or who can document to the council using tax returns or other records the maintenance of a practice of hypnotherapy for meaningful remuneration for a period of three (3) years. Persons receiving initial registration under the provision of this section shall not be required to complete any internship, trainee or supervision period for renewal of registration under this act.

SECTION 14. The board may issue a registration for the practice of hypnotherapy to persons who are already registered or licensed to practice hypnotherapy under the laws of another state, if the requirements for registration or licensing in that state are, on the date of licensing or registration, substantially equal to the requirements of this act. Such applicant shall pay all of the required fees.

SECTION 15.

(a) No registered hypnotherapist shall disclose any information acquired from persons consulting such registered hypnotherapist in the capacity as a registered hypnotherapist, except that which may be voluntarily disclosed under the following circumstances:

(1) In the course of formally reporting, conferring, or consulting with administrative superiors, colleagues, or consultants who share professional responsibilities, in which instance all recipients of the information are similarly bound to regard the communication as privileged;

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(2) With the written consent of the person who provided the information;

(3) In the case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the registered hypnotherapist to protect any person from a clear, imminent risk of serious mental or physical harm of injury, or to forestall a serious threat to the public safety; or

(5) When the person waives this privilege by bringing any public charges against a registered hypnotherapist.

(b) When the person is a minor and the information acquired by the registered hypnotherapist indicates the minor was the victim or subject of a crime, the registered hypnotherapist may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry when, after in camera review of the information that the registered hypnotherapist acquired, the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor.

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(c) Any person having access to records, who participates in providing hypnotherapy or supervised by a registered hypnotherapist, is similarly bound to regard all information and communications as privileged in accord with this section.

(d) Nothing in this act shall be construed to prohibit a registered hypnotherapist from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children.

SECTION 17.

(a) The council may refuse to issue, renew, or may revoke, suspend, place on probation, reprimand, or take other disciplinary action as the department deems appropriate, including the issuance of civil penalties not to exceed one thousand dollars (\$1,000) for each violation, with regard to any registration for any one (1) or more of the following:

(1) Material misstatement in furnishing information to the council or board or to any other state agency;

(2) Violations or negligent or intentional disregard of this act, or any of its rules and regulations;

(3) Conviction of any crime under the laws of the United States or any state or territory thereof that is a felony, or that is a misdemeanor, an essential element of which is dishonesty, or of any crime which is directly related to the practice of hypnotherapy;

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(4) Making any misrepresentation for the purpose of obtaining a registration as a registered hypnotherapist;

(5) Incompetence or gross negligence in the rendering of hypnotherapy;

(6) Malpractice

(7) Advising or assisting another person in violating any provision of this act or any of its rules;

(8) Failing to provide information within sixty (60) days in response to a written request made by the council or board;

(9) Engaging in dishonorable, unethical, or conduct likely to deceive, defraud, or harm the public and violating any rules of conduct established by the board as part of a reasonable effort to regulate the practice of hypnotherapy;

(10) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in inability to practice hypnotherapy with reasonable skill, judgment, or safety;

(11) Discipline by another jurisdiction, if at least one (1) of the grounds is the same or substantially equivalent to those set forth in this section;

(12) Discipline or directly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any service not actually rendered;

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(13) A finding by the council that the person registered as a registered hypnotherapist, after having had the registration placed on probationary status, has violated the terms of probation;

(14) Abandonment of a client;

(15) Willfully filing false reports relating to the practice of a registered hypnotherapist, including but not limited to false records filed with federal or state agencies or departments;

(16) Willfully failing to report an instance of suspected child abuse or neglect;

(17) Upon proof by clear and convincing evidence that the registered hypnotherapist has caused a child to be an abused child or neglected child;

(18) Physical or mental disability, including deterioration through the aging process or loss of abilities and skills which results in the inability to practice hypnotherapy with reasonable judgment, skill or safety;

(19) Solicitation of professional services by using false or misleading advertising;
or

(20) Failure to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by the Tennessee department of revenue or the Internal Revenue Service or any successor agency.

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(c) The determination by a court that a person registered for the practice of registered hypnotherapy is subject to involuntary admission or judicial admission shall result in an automatic suspension of registration. The suspension will end upon a finding by a court that the person registered as a registered hypnotherapist is no longer subject to involuntary admission or judicial admission, the issuance of an order so finding and discharging the patient, and a decision by the department that the registered hypnotherapist be allowed to resume the practice of hypnotherapy.

SECTION 17. (a) The council may summarily suspend the registration to practice hypnotherapy without a hearing, simultaneously with the institution of proceedings for a hearing if the council finds that evidence indicates that the continuation of practice by the registered hypnotherapist would constitute an imminent danger to the public. In the event that the director summarily suspends the registration of an individual without a hearing, a hearing must be held within thirty (30) days after the suspension has occurred.

(b) All hearings shall be conducted in accordance with and final administrative orders are subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 18. Unless otherwise specified, any person found to have violated Sections 15(a), and 16(a)(15) of this act is guilty of a Class A misdemeanor.

House Health & Human Resources Committee Amendment No. 1

as amended

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 648

House Bill No. 168

SECTION 19. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 1996, the public welfare requiring it.